With respect to the first criteria, Applicant respectfully submits that requiring election between 13 and 14, which both include only claims 40-42, is improper. Consistent with the directive that a proper restriction can only be made when inventions *as claimed* are independent or distinct, M.P.E.P. § 803.01 states (emphasis in original): "*It still remains important from the standpoint of the public interest that no requirements be made which might result in the issuance of two patents for the same invention.*" In this case, Group 13 and Group 14, for example, contain the *exact* same claims. Thus, a restriction could result in a divisional application with the *exact* same claims as the parent--directly contravening the M.P.E.P. § 803.01. That is, from the standpoint of the public, a person reading the two patents would discern no difference because the claims would read identically. For this same reason, requiring restriction between Groups 1 and 2, containing an overlap of claims and Groups 3 and 4, 7 and 8, 9 and 10, and 11 and 12, each set of which contains the exact same claim or claims, is improper.

With respect to the second criteria, Applicant respectfully submits that the Office has made no showing that there would be a serious burden to examine the claims of Groups 1-14 together. In fact, the restriction requirement is completely silent as to whether there would be any burden at all, let alone a serious burden.

Finally, Applicant respectfully submits that the Examiner should, at the very least, rejoin Group 14, as well as Groups 11 and 12, and claims 10 and 11, with the elected Group 13. Group 14 should be rejoined at least for the reason discussed above, that it contains the exact same claims as Group 13. Groups 11 and 12 should be joined together for the very same reason. And Groups 11 and 12 should be rejoined with Group 13 because the Examiner indicated that "in the event either of Groups 11 or 12 are elected, the corresponding method-of-use claims will be

rejoined for further examination." Thus, since the Examiner has indicated that the corresponding method-of-use claims can be examined together if the Group 11 or 12 are chosen, then it should be equally true that the Examiner should be able to examine Group 11 or 12 along with the corresponding method-of-use claims, if the method-of-use claims are chosen. This is particularly true, because Group 13 corresponds to only a subset of the method-of-use claims which correspond to Group 11. In other words, examining Group 13 along with Groups 11 and 12 would be less of a burden than examining Groups 11 and 12 along with all the corresponding method-of-use claims. Finally, claims 10 and 11 should be joined together with Group 13 because the Examiner indicates that claims 40-42 recite "a method of treating HIV infection" and claim 11 recites "a method of inhibiting the spread or onset of a viral infection. . . to a mammalian subject exposed or at risk of potential exposure to an agent of a viral infection. . . in which the agent comprises HIV." Claim 10 is similar, except the agent is a retrovirus. Accordingly a search on claims 10 and 11 would be an acceptable and reasonable extension of the search on Group 13.

In view of the above, Applicant respectfully requests withdrawal of the restriction requirement and an action on the merits of claims 1-45.

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AUTHORIZATION

No extension of time fee is believed due. The Commissioner is hereby authorized, however, to charge any extension of time fee or any additional fees which may be required for this Response, or credit any overpayment to Deposit Account No. 50-0436.

Respectfully submitted,

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APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

The specification is changed as follows.

Page 2, first full paragraph:

AAT is a glycoprotein of MW 51,000 with 394 amino acids and 3 oligosaccharide side chains. Human AAT was named anti-trypsin because of its initially discovered ability to inactivate pancreatic trypsin. Human AAT is a single polypeptide chain with no internal disulfide bonds and only a single cysteine residue normally intermolecularly disulfide-linked to either cysteine or glutathione. The reactive site at position 358 of AAT contains a methionine residue, which is labile to oxidation upon exposure to tobacco smoke or other oxidizing pollutants. Such oxidation may reduce the biological activity of AAT; therefore substitution of another amino acid at that position, i.e. alanine, valine, glycine, phenylalanine, arginine or lysine, produces a form of AAT which is more stable. AAT can be represented by the following formula:

MPSSVSWGILLLAGLCCLVPVSLAEDPQGDAAQKTDTSHHDQDHPTFNKITPNLAEFAFS
LYRQLASTNIFFSPVSIATAFAMLSLGTKADTHDEILEGLNFNLTEIPEAQIHEGFQELLRTL
NQPDSQLQLTTGNGLFLSEGLKLVDKFLEDVKKLYHSEAFTVNFGDTEEAKKQINDYVE
KGTQGKIVDLVKELDRDTVFALVNYIFFKGKWERPFEVKDTEEEDFHVDQVTTVKVPM
MKRLGMFNIQHCKKLSSWVLLMKYLGNATAIFFLPDEGKLQHLENELTHDIITKFLENED
RRSASLHLPKLSITGTYDLKSVLGQLGITKVFSNGADLSGVTEEAPLKLSKAVHKAVLTID

EKGTEAAGAMFLEAIPMSIPPEVKFNKP**FVFLM**IEQNTKSPLFMGKVVNPTQK

(SEQUENCE ID NO. 19).